



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 35]
No. 35]

नई दिल्ली, बुधवार, मार्च 31, 1976/चैत्र 11, 1898
NEW DELHI, WEDNESDAY, MARCH 31, 1976/CHAITRA 11, 1898

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on 31st March, 1976:—

BILL No 50 OF 1976

A Bill further to amend the Tea Act, 1953.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

- | | | |
|-------------|--|--------------------------------|
| 29 of 1953, | 1. This Act may be called the Tea (Amendment) Act, 1976. | Short title. |
| | 2. After Chapter III of the Tea Act, 1953, the following Chapter shall be inserted, namely:— | Insertion of new Chapter IIIA. |

'CHAPTER IIIA

MANAGEMENT OR CONTROL OF TEA UNDERTAKINGS OR TEA UNITS BY THE CENTRAL GOVERNMENT IN CERTAIN CIRCUMSTANCES

16A. (1) In this Chapter, unless the context othrewise requires,—

(a) "authorised person" means the person or body of persons authorised, or appointed, by the Central Government under this Act to take over the management of any tea undertaking or tea unit;

1 of 1956, (b) "company" means a company within the meaning of section 3 of the Companies Act, 1956;

(c) "district average yield" means the average yield of tea in the district in which one or more tea units are located, as published by the Board;

(d) "notified order" means an order notified in the Official Gazette;

(e) "tea undertaking" means an undertaking engaged in the production or manufacture, or both, of tea through one or more tea units;

(f) "tea unit" means a tea estate or garden, including a subdivision thereof, which has a distinct entity for which accounts are kept and has a factory of its own for the production and manufacture of tea.

(2) References to an industrial undertaking in such of the provisions of the Industries (Development and Regulation) Act, 1951, as apply to a tea undertaking or tea unit by virtue of the provisions of this Chapter, shall be construed as references to a tea undertaking or tea unit, as the case may be, and references in the Act aforesaid to any provision of that Act, as applicable to a tea undertaking or tea unit, in relation to which a corresponding provision has been made in this Act, shall be construed as references to such corresponding provision. 65 of 1951.

Power to cause investigation to be made in relation to a tea undertaking or tea unit.

16B. (1) Where the Central Government is of opinion in respect of a tea undertaking or a tea unit that—

(a) the tea undertaking, or as the case may be, the tea unit has made losses in three out of five years immediately preceding the year in which such opinion is formed; or

(b) the average yield of the tea undertaking, or, as the case may be, the tea unit, during three years, out of five years immediately preceding the year in which such opinion is formed, has been lower than the district average yield by twenty-five per cent., or more; or

(c) the persons owing the tea undertaking, or, as the case may be the tea unit, have habitually made default in the payment of wages, or provident fund dues of workers and other employees, or rent of the land, or duties of excise, or such other dues as they are under an obligation to pay under any law for the time being in force; or

(d) the tea undertaking, or, as the case may be, the tea unit is being managed in a manner highly detrimental to the tea industry or to public interest.

the Central Government may make, or cause to be made, a full and complete investigation into the affairs of the tea undertaking or, as the case may be, the tea unit, by such person or body of persons as it may appoint for the purpose.

(2) Where a company owning a tea undertaking is being wound up by or under the supervision of the Court and the business of such company is not being continued, the Central Government may, if it is of opinion that it is necessary, in the interests of the general public, and, in particular, in the interest of production, supply or distribution of tea, to investigate into the possibility of running or restarting the tea undertaking, make an application to the Court, praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose; and, where such an application is made, the Court shall, notwithstanding anything contained in the Companies Act, 1956, or in any other law for the time being in force, grant the permission prayed for. 1 of 1956.

85 of 1951.

(3) The person or body of persons appointed to make any investigation under sub-section (1) or, as the case may be, sub-section (2), shall have the same powers as are specified in section 18 of the Industries (Development and Regulation) Act, 1951.

16C. (1) If, after making or causing to be made any such investigation as is referred to in sub-section (1) of section 16B, the Central Government is satisfied that action under this section is desirable, it may issue such directions to the tea undertaking or tea unit concerned, as may be appropriate in the circumstances, for all or any of the following purposes, namely:—

Power of Central Government on completion of investigation.

(a) regulating the production of tea by the tea undertaking or, as the case may be, tea unit and fixing the standards of production;

(b) requiring the tea undertaking or, as the case may be, tea unit to take such steps as the Central Government considers necessary to stimulate the production, manufacture or plantation, of tea;

(c) prohibiting the tea undertaking or, as the case may be, tea unit from resorting to any act or practice which might reduce its production, capacity or economic value;

(d) controlling the prices, or regulating the distribution, of tea produced or manufactured by the tea undertaking or, as the case may be, tea unit.

(2) Where a case relating to any tea undertaking or tea unit is under investigation, the Central Government may issue, at any time, any direction of the nature referred to in sub-section (1) to the tea undertaking or the tea unit concerned and any such direction shall have effect until it is varied or revoked by the Central Government.

16D. (1) If the Central Government is of opinion that—

(a) a tea undertaking or tea unit, to which directions have been issued in pursuance of section 16C, has failed to comply with such directions, or the tea undertaking, or, as the case may be, the tea unit, has made losses in three out of five years immediately preceding the year in which such opinion is formed; or

Power of Central Government to assume management or control of tea undertaking or tea unit in certain cases.

(b) the average yield of the tea undertaking, or, as the case may be, the tea unit, during three years out of five years immediately preceding the year in which such opinion is formed, has been lower than the district average yield by twenty-five per cent or more; or

(c) the persons owning the tea undertaking, or, as the case may be, the tea unit, have habitually made default in the payment of wages, or provident fund dues, of workers and other employees, or rent of the land or duties of excise, or in the payment of such other dues as are obligatory under any law for the time being in force; or

(d) the undertaking, or, as the case may be, the tea unit is being managed in a manner highly detrimental to the tea industry or to public interest,

the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the tea undertaking or tea unit, as the case may be, or to exercise in respect of the whole or any part of the tea undertaking or, as the case may be, tea unit, such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (1) shall have effect for such period, not exceeding five years, as may be specified in the order.

Provided that if the Central Government is of opinion that it is expedient in the public interest that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may from time to time issue directions for such continuance for such period, not exceeding one year at a time, as may be specified in the direction, so, however, that the total period of such continuance (after the expiry of the said period of five years) does not exceed two years; and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

(3) Any notified order issued under sub-section (1) shall have the same effect as if it were an order made under sub-section (1) of section 18A of the Industries (Development and Regulation) Act, 1951, and the provisions of section 18B of that Act shall apply accordingly.

65 of 1951.

(4) Notwithstanding anything contained in any law for the time being in force, no person, who ceases to hold any office by reason of the provisions contained in clause (a), or whose contract of management is terminated by reason of the provisions contained in clause (b), of section 18B of the Industries (Development and Regulation) Act, 1951, as applicable to a tea undertaking or tea unit by virtue of the provisions of sub-section (3), shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

65 of 1951.

Provided that nothing contained in this section shall affect the right of any such person to recover from the tea undertaking or the tea unit, as the case may be, monies recoverable otherwise than by way of such compensation.

Power to take over tea undertaking or tea unit without investigation under certain circumstances.

16E. (1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to a tea undertaking or tea unit, that—

(a) the persons in charge of such tea undertaking or tea unit have, by reckless investments or creation of incumbrances on the assets of the tea undertaking or tea unit, or by diversion of funds, brought about a situation which is likely to affect the production of tea, manufactured or produced by the tea undertaking or tea unit, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the tea undertaking or tea unit or for any other reason) and such closure is prejudicial to the concerned tea undertaking or tea unit and that the financial condition of the company owning the tea undertaking or tea unit and the plant and machinery of such tea undertaking or tea unit are such that it is possible to restart the tea undertaking or tea unit and such restarting is necessary in the interests of the general public.

It may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the tea undertaking or tea unit or to exercise in respect of the whole or any part of the tea undertaking or tea unit such functions of control as may be specified in the order.

(2) On the issue of a notified order under sub-section (1) in respect of a tea undertaking or tea unit,—

(a) the provisions of sub-sections (2), (3) and (4) of section 16D, and the provisions of section 16G, shall apply to a notified order made under sub-section (1) as they apply to a notified order made under sub-section (1) of section 16D; and

65 of 1951.

(b) the provisions of sub-sections (3) and (4) of section 18AA of the Industries (Development and Regulation) Act, 1951, shall apply to the tea undertaking or tea unit, as the case may be, to the same extent as they apply to an industrial undertaking.

65 of 1951.

16F. Without prejudice to the provisions of section 18B of the Industries (Development and Regulation) Act, 1951, as applicable to a tea undertaking or tea unit, as the case may be, the person or body of persons authorised under section 16D, or, as the case may be, section 16E, to take over the management of a tea undertaking or tea unit may, with the previous approval of the Central Government, make an application to any court having jurisdiction in this behalf for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 16D or section 16E, between the tea undertaking or the tea unit and any other person; and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith or is detrimental to the interests of the tea undertaking or tea unit, make an order cancelling or varying (either conditionally or subject to such conditions as it may think fit to impose) that contract or agreement, and the contract or agreement shall have effect accordingly.

Contracts in bad faith, etc., may be cancelled or varied.

16G. (1) Where the management of a tea undertaking or tea unit owned by a company has been taken over by any person or body of persons authorised by the Central Government under this Act, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such company,—

Application of Act 1 of 1956.

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed in a meeting of the shareholders of such company shall be given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of such company or for the appointment of receiver in respect thereof shall lie in any court except with the consent of the Central Government:

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act, and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to such company in the same manner as it applied thereto before the issue of the notified order. 1 of 1956.

Power of Central Government to cancel notified order under section 16D. or 16E.

16H. If, at any time, it appears to the Central Government on the application of the owner of a tea undertaking or tea unit or otherwise that the purpose of the order made under section 16D or section 16E, has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and, on the cancellation of any such order, the management or control, as the case may be, of the tea undertaking or tea unit, as the case may be, shall vest in the owner of that undertaking or unit.

Power of Central Government to authorise, with the permission of the Court, persons to take over management or control of tea undertakings or tea units.

16-I. (1) If the Central Government is of opinion that there are possibilities of running or restarting a tea undertaking or tea unit in relation to which an investigation has been made under sub-section (2) of section 16B, and that such tea undertaking or tea unit should be run or restarted for maintaining or increasing the production, supply or distribution of tea, that Government may make an application to the Court by which the company owning such tea undertaking or tea unit has been ordered to be wound up, praying for permission to appoint any person or body of persons to take over the management of the tea undertaking or, as the case may be, tea unit, or to exercise in respect of the whole or any part of the tea undertaking or tea unit, such functions of control as may be specified in the application.

(2) Where an application is made under sub-section (1),—

(a) the provisions of sub-section (2) of section 18FA of the Industries (Development and Regulation) Act, 1951 shall apply to the tea undertaking or tea unit, as the case may be, subject to the modification that for the words "twelve years" occurring in the second proviso thereto, the words "two years" shall be substituted; 65 of 1981.

(b) the provisions of sub-sections (3) to (10) (both inclusive) of section 18FA of the Industries (Development and Regulation) Act, 1951 shall apply to the tea undertaking or tea unit referred to in sub-section (1), to the same extent as they apply to an industrial undertaking. 65 of 1951.

65 of 1951.

16J. The Central Government may, if it is satisfied in relation to a tea undertaking, tea unit or any part thereof, the management or control of which has been taken over under section 16D or under section 16E or under section 16-I, that it is necessary so to do in the interests of the general public with a view to preventing fall in the volume of the production of tea, exercise in relation to such tea undertaking or tea unit or part thereof the same powers as are exercisable by it in relation to an industrial undertaking under section 18FB of the Industries (Development and Regulation) Act, 1951, and the said section and the Third Schedule referred to therein shall apply to a tea undertaking or tea unit accordingly.

Power of Central Government to make certain declarations in relation to tea undertakings or tea units.

16K. (1) Where the management or control of a tea undertaking or tea unit, as the case may be, has been taken over under section 16D or under section 16E or under section 16-I, the Central Government may, at any time during the continuance of such management or control, call for a report from the authorised person on the affairs and working of the tea undertaking or tea unit, and in submitting the report the authorised person shall take into account the inventory and list of members and creditors prepared under section 16L.

Power of Central Government to call for report on the affairs and working of a managed tea undertaking or tea unit.

65 of 1951.

(2) On receipt of the report submitted by the authorised person, the Central Government may exercise all or any of the power conferred on it by sections 18FD, 18FE and 18FF of the Industries (Development and Regulation) Act, 1951, to the same extent and subject to the same conditions, limitations or restrictions as are specified in the said sections, and the provisions of the said sections shall become applicable to a tea undertaking or tea unit, as the case may be.

65 of 1951.

16L. For the purposes of this Act, the authorised person shall, as soon as may be after taking over the management of a tea undertaking or tea unit, prepare a complete inventory of the properties, belongings, liabilities and obligations of such tea undertaking or tea unit, as the case may be, and a list of members and creditors of such tea undertaking or tea unit, in accordance with the provisions of section 18FG of the Industries (Development and Regulation) Act, 1951, and the said section shall apply to a tea undertaking or tea unit accordingly.

Preparation of an inventory of the assets and liabilities and list of members and creditors of managed tea undertaking or tea unit.

Bar of
suits and
other pro-
ceedings
in relation
to the tea
under-
takings
or tea
units.

16M. No suit or other legal proceedings shall be instituted or continued against a tea undertaking or tea unit in respect of which an order has been made under section 16D or under section 16E, except with the previous permission of the Central Government or of any officer authorised by that Government in this behalf.

Rules
made
under Act
to apply,

16N. Until any rule is made in relation to any matter referred to in this Chapter, the rules made by the Central Government under the Industries (Development and Regulation) Act, 1951, in relation to such matter shall, as far as may be, apply, to the extent they are not repugnant to any provision of this Act or any rule made thereunder and references in such rules to the provisions of that Act shall be construed accordingly.’

65 of 1951.

STATEMENT OF OBJECTS AND REASONS

Tea industry occupies a very important position in the economy of the country, in that it provides employment to over six lakh workers and earns over rupees 200 crores worth of foreign exchange for India in a year. There are in North-East India some 16 growing areas, each having its own peculiar agro-climate. There are some 1000 gardens over these areas. These gardens are scattered in rural areas and, in addition, they are comparatively small units. North-East India produces a wider variety of tea than any other growing area in the world. From the Himalayan heights of Darjeeling descend the world's most flavoury and, therefore, the most expensive teas. On the other hand, from the plains of the Brahmaputra Valley come teas which are the most attractive to look at, the richest to drink and the longest to endure in freshness. But unfortunately, the tea units in general and in North-East India, in particular, are facing difficulties in the matter of finance, managerial skill, etc. A number of tea gardens are reported to have been closed; few others are reported to be sick or uneconomic. Unless timely corrective action is taken, it is feared that sick and uneconomic tea gardens may be closed down resulting in problems of unemployment and economic hardship which might ultimately affect productivity of tea and country's earnings of foreign exchange by the export of tea.

2. In the Tea Act, 1953, there is no provision for taking over the management of the sick and uneconomic gardens. That Act only provides for the control and development of tea industry under the Union Government. It is, therefore, proposed to include in the said Act provisions, analogous to the provisions contained in Chapters III, IIIA, IIIAA, IIIAB and IIIAC of the Industries (Development and Regulation) Act, 1951, to empower the Central Government—

(a) to order an investigation into the working of a tea undertaking or tea unit which is sick and uneconomic;

(b) to take over the management of such tea undertaking or tea unit initially for a period of five years with the possible extension of one year at a time but not beyond seven years in the whole;

(c) to take decision for liquidation or reconstruction of the managed tea undertaking or tea unit in accordance with the provisions contained in Chapter IIIAC of the Industries (Development and Regulation) Act, 1951.

NEW DELHI;

The 20th February, 1976.

D. P. CHATTOPADHYAYA.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. I-12014(2)/74-Plant(A), dated the 27th March, 1976 from Prof. D. P. Chattopadhyaya, Minister of Commerce to the Secretary-General, Lok Sabha.]

The President having been informed of the Tea (Amendment) Bill, 1976 recommends, under 117(3) of the Constitution of India, consideration of the Bill in Lok Sabha.

FINANCIAL MEMORANDUM

Sections 16B(1), 16B(2), proposed to be inserted in the Tea Act, 1953, by clause 2 of the Bill, aim at acquiring powers to cause investigations into the affairs of a tea undertaking considered sick and to associate one or more person possessing special knowledge on any matter relating to the investigation to assist in holding such investigation. To begin with, in order to carry out investigation it may be necessary to constitute an agency consisting of 4 to 5 person, including officials possessing special knowledge for a period of one year and to set up a secretariat to assist this agency in its task. The expenditure on pay and allowances, including Travelling Allowance, Daily Allowance and the like and other office equipment and contingency is likely to be Rs. 2 lakhs approximately for the period 1976-77. In subsequent years, depending on the number of tea estates to be investigated (for the purpose of takeover) the tenure and composition of the agency would be determined.

Sections 16D and 16E, as proposed to be inserted by clause 2 of the Bill, empower the Central Government to authorise a person or body of persons to take over the management of a sick tea undertaking or sick tea unit. As and when the management of any such sick tea undertaking or tea unit is taken over, the expenditure involved for carrying on the management shall be met after due appropriation made by Parliament by law.

In the case of a tea undertaking in respect of which liquidation proceedings are going on in the Court, it may be necessary to seek the permission of the court for the takeover of the management. Subsequent recourse to the court is envisaged for extensions/ultimate liquidation/reconstruction schemes (note sections 16B(2), 16-I and 16K(2), as proposed to be inserted in the Tea Act, 1953). There may be other matters incidental to the take-over where court proceedings may be involved. While it is estimated that in the year 1976-77, the expenditure would be about Rs. 15,000 towards legal costs, subsequent expenditure would depend on the course of action determined at that stage.

In case it is decided to liquidate the tea undertaking and if such an undertaking is put for sale or auction, the Government has the right to reject the offer or bid in case it is not upto the Reserve Price determined earlier. In that case, the option to purchase it at that price is open to Government. Similarly, in the event of reconstruction of the Company, there is provision for Government acquiring controlling interest in the undertaking by purchase of existing shares or to increase the share capital suitably. In both the cases, the Central Government will have to incur expenditure for payment of sale price or investments in share capital of the tea undertaking. The quantum of expenditure will vary from estate to estate and there is no possibility of incurring such an expenditure in the next three years. In any case, no such expenditure will be incurred without due appropriation made by Parliament by law.

The Bill, if enacted, will not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill seeks to make certain provisions of the Industries (Development and Regulation) Act, 1951 applicable to tea undertakings and tea units. The provisions which are sought to be so made applicable provide for making of rules with regard to the following matters, namely:—

(a) determining the powers and duties of the authorised person for management of business of the tea undertaking, or, tea unit, as the case may be;

(b) the terms and conditions on which, and the manner in which, the authorised person may—

(i) raise loan for the purpose of running the tea undertaking or tea unit;

(ii) make replacement or repair of machinery of the tea undertaking;

(iii) recover loans from the assets of the tea undertaking or tea unit;

(iv) serve notice of the reserved price to the members and creditors of the company owing, the tea undertaking or, tea unit, as the case may be.

2. The matters in relation to which such rules may be made are matters of detail or procedure and it is hardly possible to provide for them in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary-General.



